Ontario Human Rights Commission

affirmation

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The Case The Commission Won While Losing

Earlier this year, a public board of inquiry was held into complaints of sexual harassment, which were brought to the Ontario Human Rights Commission by two Niagara Falls waitresses. This was the first time a board was to deal with sexual harassment as a discriminatory term and condition of employment on the basis of sex. Board chairman Owen B. Shime handed down his decision in August.

While the complainants lost their case, the first part of the decision established principles which are a landmark in Ontario (and Canadian) legal history and are of the utmost importance.

The complainants had alleged that they had been sexually harassed by their employer, the owner of a restaurant. The harassment was perceived to arise from a series of remarks which the women construed to be sexual innuendos. They felt their refusal to comply with these advances would bring about termination of their services. In fact, both women were eventually discharged and it was then that they filed their complaints.

The respondent denied the allegations and maintained that he had at all times acted with complete propriety. One woman testified that the emotional impact of the perceived harassment was such that she was unable to work for a period of seven months after her dismissal.

In his decision, Mr. Shime ruled that the burden of proof had rested with the complainants. Because of conflicting testimony and problems of credibility, he could not but dismiss the case for lack of conclusive evidence. On this score, then, the commission and the complainants lost the case.

Nevertheless, the case was won in another arena, and in the long run this may prove to be of great importance. Mr. Shime indicated that because this was the first case of its kind to be heard under the Ontario Human Rights Code, he would proceed to discuss the general principles applicable to complaints of sexual harassment. The relevant section of the Code is Section 4(1):

> No person shall ... (b) dismiss or refuse to employ or to continue to employ any person ... (g) discriminate against any employee with regard to any term or condition of employment, because of ... sex ... of such person or employee.

In Mr. Shime's opinion, the Code

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Religious Question Leaves Grey Area

An important decision by Professor Edward J. Ratushny, appointed as a board of inquiry, was handed down earlier this year. It dealt with the right of a woman to refuse work on a Saturday because of her religious convictions and practices.

The woman in question had been employed on a full-time basis by a large department store in Kingston and in accordance with her contract had worked on alternate Saturdays. At the time of her employment she was not a member of the Seventh Day Adventist Church but decided to join it in 1978. Members of this faith, for whom the Sabbath falls between sundown on Friday to sundown on Saturday, are required not to work during this period. Subsequently, she went on part time but her inability to work *any Saturday* led eventually to her dismissal. She filed a complaint with the Ontario Human Rights Commission, alleging discrimination in employment because of her creed. While she conceded that there existed no malicious motive or intention on the part of her employer to discriminate against Seventh Day Adventists, she nonetheless claimed that the Ontario Human Rights Code had been contravened.

The Code provides that "No person shall ... discriminate against any employee with regard to any term or condition of employment because of ... creed ... of such ... employee." The purpose of the Act in this respect, as Professor Peter Cumming had pointed out in a previous judgement, is that Ontario, as a society, truly wishes to encourage every person to practice the faith of his or her choice. If this is the case, employers must be flexible enough to accommodate the practices of people who are exercising their religious freedom–where such accommodation can reasonably be made without an undue hardship on the employer.

"Reasonably"–thereby hangs an important consideration. If a business, for instance, were open only on Saturdays the employer could not reasonably make any accommodation in order to employ people who are prohibited by their religion from working on this day.

The board of inquiry held that the burden of proof in demonstrating that reasonable accommodation could be made rested with the commission and the complainant, rather than the employer. In this case, therefore, the complainant and the commission would have to prove that the employer could make alternative arrangements in order to accommodate her religious beliefs and practice, since neither malice nor discrimination were admitted by all parties to have existed. But the board, while dismissing the complaint, felt that with regard to responsibility for proof there was a grey area which the Code does not cover. Professor Ratushny concluded the case might indeed be an appropriate decision for an appeal with the object of establishing binding precendent in relation to the important principle involved. The commission therefore decided to appeal the decision to the Supreme Court of Ontario Divisional Court. The appeal has not yet been heard. ■

The KKK in Our Midst

CP Photo

Members of the Ku Klux Klan perform one of their notorious rites.

It hardly needs saying that the avowed purposes of the Ku Klux Klan run counter to everything the Ontario Human Rights Commission and the majority of our citizens stand for. We find its advocacy of white privilege odious, and the idea that non-white citizens have no place in our country, beneath contempt.

What bothers us is the way certain newspapers and radio and television stations have treated the handful of KKKers in our midst. By giving them repeated interviews and spots on talk shows they have made the organization appear respectable, and more than one interviewer has fallen for the nice "cleaned up" mask the KKK has put on its racist views. Doing so represents a sad and sorry abandonment of public responsibility on the part of people who should know better.

Meanwhile, we support the action of the City Councils of Toronto and Kitchener who have condemned the presence of the Klan. And we endorse the announced objectives of the Attorney General. He will carefully monitor the KKK's poisonous activities and bring the full force of the law to bear upon them wherever and whenever feasible. ■

The Case of The Single Man

Robert O. was hired by an industrial company in eastern Ontario in June, 1979. Just before Christmas, he and six other men were laid off from their work. Five of these men were single. Were they denied work because of their marital status? Mr. O. filed a complaint with the Ontario Human Rights Commission alleging that he was a single male and had reason to believe that he was discriminated against because of his marital status.

Investigation showed that reports of Mr. O's work had been generally favourable. "He is a good worker;" read a statement from the company. "He completed work as directed and can be recommended for employment." When all the employees had been gathered together for a meeting, Mr. O. had inquired about lay-offs. He had been told that married men had more financial responsibilities and therefore should be kept on. Indeed, two recently hired workers were kept on–one had been at the plant for one week, and the other for three weeks.

Said the investigating officer: "There was no doubt that marital status had been one of the criteria used, and it could not be a reason, however slight, to lay off a single person. And although the general intent (of the firm) did not appear to have been discriminatory, the final outcome appeared to have that effect."

The company agreed to pay Mr. O. for two weeks lost wages and to post a Code Card on their employee bulletin board.

This case might seem, at first glance, to be tenuous because it is possible to perceive the company's action as humanitarian. It is easy to assume that married men might have more responsibilities than single men. But it is also easy to assume, for example, that a married man might have a wife who is working and able to maintain her income or that a single person might have an elderly or sick parent for whom he or she is responsible. The fact is that no assumptions must be made. It is unfair that married men are given opportunities that single men are not. It is the responsibility of the Ontario Human Rights Commission to protect *equal* rights and privileges–not *special* rights and privileges. ■

Letters Invited

We welcome your reaction to *Affiirmation*. Write us—we're looking for your participation.

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attempts to establish uniform working conditions for employees without regard to the grounds enumerated in Section 4. Consequently discrimination based on sex is prohibited by the Code. "Thus, (says Mr. Shime), the paying of a female person less than a male person for the same job is prohibited, or dismissing an employee on the basis of sex is also prohibited.

But what about the sexual harassment? "Clearly" (he goes on to say), "a person who is disadvantaged because of her sex is being discriminated against in her employment when employer-conduct denies her financial rewards because of her sex, or exacts some form of sexual compliance to improve or maintain her existing benefits ... ".

"The forms of prohibited conduct that, in my view, are discriminatory run the gamut from overt gender-based activity, such as coerced intercourse, to unsolicited contact to persistent propositions to more subtle conduct such as gender-based insults and taunting, which may reasonably be perceived to create a negative psychological and emotional work environment. There is no reason why the law, which reaches into the work place so as to protect the work environment from physical or chemical pollution or extremes of temperature, ought not to protect employees as well from negative, psychological and mental effects where adverse gender-directed conduct emanating from a management hierarchy may reasonably be construed to be a condition of employment."

Obviously there is no hard and fast line, and Mr. Shime was well aware of this fact.

"One must be cautious that the law not inhibit normal social contact between management and employees or normal discussions between management and employees. It is not abnormal, nor should it be prohibited, activity for a supervisor to become socially involved with an employee. An invitation to dinner is not an invitation to a complaint. The danger or the evil that is to be avoided is coerced or compelled social contact where the employee's refusal to participate may result in a loss of employment benefits. Such coercion or compulsion may be overt or subtle but if any feature of employment becomes reasonably dependent on reciprocating a social relationship proffered by a member of management, then the overture becomes a condition of employment and may be considered to be discriminatory."

Mr. Shime further discussed the question of whether or not a company is jointly liable when one of its employees discriminates. He answered in the affirmative. The company is responsible for creating working conditions that are suitable and comply with the law; hence, its agents and their actions which infringe upon the propriety of working conditions make the company liable.

In an editorial on September 3, The Toronto *Globe and Mail* took exception to important sections of Mr. Shime's decision. It felt that the situations that the Code was attempting to cover were already covered by the criminal law, under which a person is liable for improper sexual advances–at work or anywhere. The editorial was not insensitive to the general problem but warned against extending the Code "into the grey area". It said: "Without dismissing the real problems any employees may have with lecherous, insulting or intimidating employers, we consider it vital that the Government does not charge blindly into the work place with regulations which, ridden with generalities and inconsidered prohibitions, do as much damage as the practices it seeks to regulate out of existence."

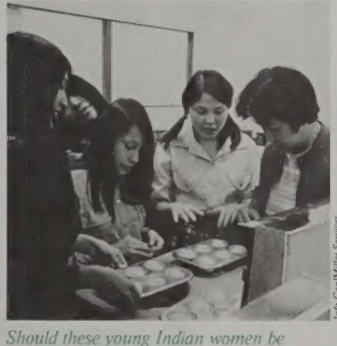
The commission too is not insensitive to the problems of "grey areas"–but when the case could not be settled it recommended it for a board of inquiry precisely because it felt that sexual harassment had to be brought, at some time, into the arena of judicial interpretation. This has now been done and in this respect (although the individual case was lost on its factual merits) the commission won an important point of principle. ■

Native Women Face a Special Problem

When a Native man marries, his Indian status remains unaffected, regardless of whether he marries a Native or a non-Native woman. But the reverse is not true. When Ms. C.B., a Native woman, married a non-Native man she lost her Indian status, for the Indian Act Section 12(1) (b) expressly so provides, and in view of this Act the Canadian Human Rights Commission lacked jurisdiction. Subsequently the complainant went to the United Nations, grieving that Canadian law contravened the UN Charter on Human Rights in that she was robbed of her free choice because she was a woman.

The Ontario Human Rights Commission has gone on record urging an immediate amendment to the federal law, and has forwarded to the Honourable John Munro, Minister of Indian Affairs, the following resolution:

> "Whereas we believe Section 12(1) (b) of the Indian Act discriminates against certain status Native women of Canada; whereas we believe that the impact of Section 12(1) (b) of the Indian Act is to deprive the cultural and birthright status of certain Native women of Canada, and whereas Section 12(1) (b) of the Indian Act seems to be contrary to the spirit and intent of the Canadian Bill of Rights and the Declaration of Human Rights Charter of the United Nations, It is hereby resolved that this meeting of Commissioners of the Ontario Human Rights Commission, held in Toronto, Ontario, on August 19, 1980, request the Government of Canada, through the Minister of Indian Affairs, Honourable John Munro, to immediately remove the discriminatory Section 12(1) (b) of the Indian Act legislation. Be it further resolved that decisions respecting the membership criteria of the Indian Nations of Canada be determined by the leadership of these said Nations". ■



Info Can/Miller Services

Should these young Indian women be deprived of their heritage if they choose to marry non-Indian men?

Who Drinks the Beer Anyway?

From Sol Littman

From first light to long after midnight, for 12 minutes out of every hour, a steady stream of finely-honed TV commercials influences our product choices and shapes our view of society.

The society most Canadian advertisers seem to prefer is one in which non-whites are never seen in sleek singles-bars, children never have non-white friends and families are typically white and middle class.

Beer drinking, whether on the farm or on the beach, seems to be a totally white preoccupation. Soups, food flavourings, pies, puddings and toothpastes never seem to be used by other than white housewives and children.

Even the Ontario government, supported by taxpayers of all races, is guilty of producing television commercials that deny the multi-cultural, multi-racial nature of the province. A noteworthy recent example is the Ontario department of energy commercials that call on people to "Conserve it, preserve it."

The effect of such exclusion, sociologists tell us, is to reinforce the idea that blacks, orientals, East Indians and Native peoples have no legitimate role in our society. It is harmful to the self-image of non-white children never to see "their kind" on television.

In spite of an excellent research study on the subject by York University Sociologist, Stanley Elkin 10 years ago, and several efforts by the Ontario Human Rights Commission to obtain the voluntary cooperation of the advertising industry, most producers of TV commercials continue to remain indifferent to the problem.

General Foods Media Director, Mike Kennerly, says ignorance–not prejudice–is the chief stumbling block to wider use of ethnic and racial representatives in television commercials.

"It's not that advertising people are opposed to their inclusion, it's just that they never think of it," he says. "Most copywriters are WASPS who simply project their own images."

Other advertising executives report that the failure to use blacks and other ethnic types results from:

- Fear that the product will be thought of only as a black or ethnic product.
- Fear that the product will fail to sell because of insufficient identification between the viewer-consumer and the actor-seller.
- The absence of skilled, persuasive black, oriental, and East Indian actors capable of selling a product.

The first two arguments are refuted by the U.S. experience. In the United States, blacks, Hispanics and Native Indians are seen frequently in TV commercials. Companies report increased, rather than decreased, sales.

In Canada, the success of Speedy Muffler and Realemon commercials employing Italian and Japanese actors should reassure advertisers.

Black actors claim that blacks play a leading role in American and Canadian entertainment and deny that there is any shortage of skilled black actors.

Who makes the decision to exclude ethnics from commercials? At what level are these decisions made?

In the opinion of veteran casting agent, Karen Hazard, the advertising agency, rather than the advertiser, makes the decision.

"I think it grows out of the competitiveness between agencies, the anxiety of getting and keeping an account," she says. "It's easier to go the safe route and avoid any suggestions that might upset the sponsor."

However, Maria Armstrong of Karnick-Armstrong Casting holds that the decision is made by the manufacturer who decides where the company's message should be aimed.

"Their assumptions are usually based on expensive market research," she says. "Coke for example, aims at young people, detergents at the housewife."

But what about the one-third of the Canadian population that is neither French nor English in origin? What about the Italians, Greeks, Portuguese, South Asians, Chinese and Jamaicans who fail to see themselves portrayed on Canada's most pervasive cultural instrument? Don't they comprise a significant market?

Stewart H. Kinsman, president of Borden's food division, says that with commercials costing up to $50,000, most Canadian companies do not have the luxury of making different commercials for different segments of the market.

As a result, the safest image–the one most Canadian advertisers search for–is the white, middle class, blandly beautiful family. Everyone else, they assume, aspires to be like them anyway.

The notion that people take pride in who they are and value their own appearance, costume and cultural heritage is still a curious, unproven idea to the Canadian advertising industry.

In any case, the fact is that Canadian advertisers, advertising and casting agencies are contravening the Ontario Human Rights Code. It is illegal to refuse employment to people who can do the job because of their race or ethnic origin.

It is just as illegal to issue a discriminatory job order to a casting agency which represents actors as it is to issue one to an employment agency that refers stenographers.

Since efforts by the Human Rights Commission to obtain the voluntary cooperation of the industry appear to have been inconclusive, perhaps now is the time to explore greater fairness and stricter regulations through additional legislation.

Editor's note: Mr. Littman is a prominent Toronto Journalist. At this writing, discussions between the commission and representatives of the advertising industry have entered a new phase which we hope will be constructive. ■

Statistics Tell a Tale

At this writing, statistics have been completed for the month of July 1980, detailing the nature of case work before the Ontario Human Rights Commission.

Out of 81 cases, 77 were initiated by individual complainants and four by the commission itself (under Section 13 of the Ontario Human Rights Code).

Employment practices accounted for 65 cases, housing accommodations for seven, and services and facilities, reprisals and union membership for the remainder.

Where do most of the complaints originate? Toronto registered 46, and the balance were received in regions beyond Toronto.

What complaint categories predominated? Race, ancestry and national origin led with 32; 24 complaints were based on sex or marital status.

Finally, of all the complaints (new and old) before the Commission in July, 41 were concilated; nine were dismissed because of insufficient evidence; 11 were withdrawn and two were decided by a board of inquiry. With the addition of 81 new cases, commissioners and staff were dealing with 1,139 cases at the end of the month. ■

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M7A 1A7

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Editorials

Half Empty or Half Full?

There is a well-worn story that tells of two people looking at one glass of water. One says it's half empty and the other, it's half full. Both of course are right.

Beliefs about the state of human rights are very similar.

Look at it one way and you will find prejudice working everywhere. Visible minorities are constantly running into discrimination; the aged or aging find themselves all too soon relegated to the ash heap of uselessness; women cannot break the multitude of stereotypes that militate against their full advancement to equality of opportunity, and so on. In the view of many, human rights are denied as much as they are asserted.

But others, from another perspective, see great advances on the front of human relations. They look at progress that has been made and at the sense of justice that has been recognized as a policy of the state–even though the practice usually falls short of the promise. They look at the possibility of legal redress for grievances of discrimination and the recognition by government and law that equality of opportunity is for every person a right to obtain and for the total community an obligation to secure.

As in the simile of the glass of water, both views are right. It would be wrong to speak only of failures without taking cognizance of successes. Much has been achieved in human rights, but much remains to be done. ■

'You Can't Enforce Love'

It is no secret that human rights legislation and its enforcement find supporters as well as detractors. The latter will sooner or later repeat a tired but popular cliché: the Ontario Human Rights Code is wrong in principle because it can't legislate love.

Of course not. No one who believes the Code to be an important piece of legislation has ever claimed that creating love is its objective. We do have laws that prevent people from injuring each other; their purpose is to enhance the social weal, not engender love.

The Ontario Human Rights Code exists to safeguard the fabric of our society by giving all its members equal access to the opportunities that life offers. It prevents people from hurting their neighbours. If in carrying out its provisions people arrive at a greater degree of appreciation and understanding of the existence and the needs of others, so much the better.

As Lester and Bindman have written: "Legislation on human rights performs several functions in relation to community consensus. It sums up and declares public policy, officially and unequivocally. It therefore encourages people to take a personal stand against imagined or real pressures around them from employers or colleagues to "go along with" discriminatory practices. It provides legal redress for minority groups whose rights are being over-ridden and creates peaceful means for resolving inter-group tensions that otherwise would seek more explosive solutions. It is too easy to say that morality cannot be legislated. Acts of discrimination can be prohibited. That in itself ultimately reduces the level of prejudice, for as long as people are seen as being treated unequally, the tendency to see them as unequal will continue. When the occasion is removed, the tendency is not fed."

Thus the Ontario Human Rights Code makes a highly constructive contribution to our society. ■

Standing up for One's Rights

A black Canadian was referred by Canada Manpower to a department store for a position as management trainee. After successfully completing a written test at an interview for the position, the complainant was questioned as to his immigrant status. When the complainant replied that he was a Canadian citizen, the respondent requested that he return the next day with a copy of his citizenship papers and a photograph of himself. The complainant told the respondent he believed that it was illegal to ask for these. He refused to comply with the request and the respondent replied that he would not see the complainant again unless he did.

During investigation, the investigating officer was told by two store managers that their instructions were to obtain photographs of applicants, and also, when applicable, copies of landed immigrant status. The officer obtained a copy of the relevant page of the company's manual, which clearly outlines these instructions.

As settlement, the respondent company agreed to revise its hiring procedure by requesting photographs and proof of capacity to work in Canada only after hiring; to advise staff involved in recruitment accordingly; and to reinterview the complainant. The complainant who had stood up for his rights, was subsequently hired by the respondent as a management trainee.

The Ontario Human Rights Commission provides ongoing assistance to employers by reviewing their employment application forms, if so desired. A pamphlet on the subject is available from the commission on request. ■

Ubale Profile

By Janet Enright

"It is important to bear in mind that problems of race relations are societal problems. Neither the government nor the Race Relations Division alone will be able to solve them. It is society as a whole which should solve these problems. The role of the Race Relations Division therefore will be that of facilitator and co-ordinator."

Deep in the heart of a Toronto suburb, Dr. Bhausaheb Ubale, Race Relations Commissioner, is relaxing for the first time in months. "I am always working," he smiles. "I could work 24 hours a day. Sometimes I feel like I do–and never get my work done." Ubale is proselytizing all the time–to researching students, to Kiwanis and church groups, to mayors and community organizations, to police training schools, to people with complaints, and to people waving placards. He is convinced that only a concentrated, consistent effort will combat the barriers to equality of opportunity evident in a racially mixed society. This weekend is only an interlude in a gruelling schedule.

"We cannot be complacent about the imperative to treat visible minorities, who form such an important part of our social fabric, with fairness and equity. The immigrant community is not an invading force. They have come here with the nation's expressed consent. They are not guest workers but people who gave up their own home land to make Canada their home."

From his early school days in India, Ubale was actively involved in his father's political evening meetings, quietly expressing his own commitment. When he was older he became a member of the youth congress, "Because I passionately wanted a political career."

The obvious place to pursue such a goal, Ubale perceived, was through the civil service and he worked as an administrative assistant in various departments of the Government of India for six years. But he was absorbing other influences which would take him in a different direction. He had obtained his university degree in business management, but he was now studying politics at a political science institute; he was reading Nehru–the writer who, he says, most influenced him.

In 1962, Ubale mobilized the support of political leaders of all factions to undertake the difficult task of setting up the Institute of Political Studies in Bombay. His aim was to provide the youth and the workers of every political party with a sound knowledge of politics, sociology and economics. "Then I knew that I had to involve myself as an intellectual in public life and approach a career as a social activist through an understanding of the broad nature of such national problems as economics, politics, and sociology." It wasn't an easy decision for it meant a move to England to pursue studies there.

In London, Ubale immersed himself in a sea of social activist groups. It was from this vantage point that he witnessed at first-hand the consequences of placing ethnic issues in the political arena.

While studying for his doctorate he organized an Indian Student Hardship Fund. He had been the vice-chairman of the Campaign Against Racial Discrimination, a group which managed to get a race relations act passed in the British Parliament. These, and similar, activities enhanced his reputation as a conciliator, organizer, fund raiser and, more importantly, as a man with creative solutions to problems of a racial nature.

With his doctorate completed in economic and industrial planning, Ubale decided to emigrate to Canada.

To have arrived in Canada during Prime Minister Trudeau's price and wage controls seems a little like setting out on the Titanic. However it takes more than hardship to daunt Ubale the eternal optimist. He credits that strength to his Hindu background.

Dr. Bhausaheb Ubale

The talk leads into the issues of discrimination which concern Ubale every day. "Discrimination is an amorphous phenomenon. It surrounds us, yet we cannot pinpoint it; we feel it but we cannot explain it."

"Prejudice is one's attitude. Discrimination is an act of denial which is often based on that prejudice. Discrimination is not tolerated, although prejudice is. But this society must take an interest in these problems not because of any historical guilt or political dogmatism or because it is against the law, but because it is the right thing to do."

And it was because he saw and felt this when he first arrived, that Ubale became actively involved with South Asians in Toronto as he had done in London. Feelings involving South Asians were peaking in the late 70s and Ontario's Attorney-General requested a meeting with community's leaders. Ubale was one of them. Following that meeting he wrote an in-depth report about the situation, not only talking about the problems, but suggesting ways to resolve them. The Ontario Government saw the report and confirmed Ubale's sentiment that "there is a need for people to understand the issues in order to solve the problems." Clearly he was the right man to organize and develop the principles of the Race Relations Division.

"We must increasingly move out into the community, to our schools, to places of employment, to volunteer organizations, to trade unions, to our churches and, indeed, to every sector and institution in our society, with an active educational and preventive program aimed at eradicating all forms of racial bias and discrimination."

When Bhausaheb Ubale was a young child, he made a commitment to the socio-political arena. He has rarely strayed from that commitment. Now, at the age of 44, he still has the zeal and energy needed to maintain the momentum of such an insistent vocation.

Other than the Chairman, he is the only full-time human rights commissioner, often working 12 and 14-hour days. But it is Ubale's sensitivity that makes him so uniquely capable to deal with this Division, a vital mandate of the Ontario Human Rights Commission.

"Without a substantial, continuing flow of immigrants, it is doubtful that we could sustain the high rate of economic growth and the associated cultural development which are essential to the maintenance and development of our national identity." ■

Violence is Never Far Away

By W. Gunther Plaut

Expectant rock fans were filing into the Canadian National Exhibition stadium in Toronto; their idol Alice Cooper was scheduled to perform. When he failed to turn up the audience of several thousands became a violent mob venting its frustrations on chairs and other property, throwing them, breaking them, and changing what was to have been a pleasant evening into one of ugly violence. A few nights later a similar outbreak occurred in another part of the world thousands of miles away.

It may be safely assumed that the vast majority of the chair breakers would have behaved differently as individuals. Individual behaviour is one thing; collective behaviour another.

I have personal memories of the latter. More than once I stood as part of a crowd in Berlin's Lustgarten in the early 1930's, when Adolf Hitler harangued the masses. Before he was finished the people around me turned into a mob capable of doing anything from self-sacrifice to killing others. When they left they went home to their families and most likely behaved *as individuals* like normal human beings.

If it is true that racial tensions have risen significantly in our midst, then we must ask: at what point can they break open the fabric of society through acts of violence, and how can such outbreaks be prevented?

There are no simple answers. An evening spent with Robert R. Evans' *Readings in Collective Behaviour* or Neil J. Smelser's *Theory of Collective Behaviour* is enough to convince the reader of the enormous complexity of the subject which no simple article can hope to describe adequately.

Under certain given circumstances, says Gustave LeBon, and only those circumstances, an agglomeration of men and women presents new characteristics very different from those of the individuals composing it. When this happens, sentiments and ideas of all the persons in the gathering take one and the same direction and their conscious personality vanishes.

"A collective mind is formed, doubtless transitory, but presenting very clearly defined characteristics. The gathering has thus become ... a single being and is subjected to the law of the mental unity of crowds." LeBon goes on to say: "Whoever be the individuals that compose it, however like or unlike be their mode of life, their occupations, their character, or their intelligence, the fact that they have been transformed into a crowd puts them in possession of a sort of collective mind which makes them feel, think, and act in a manner quite different from that in which each individual would feel, think and act were he in a state of isolation. There are certain ideas and feelings which do not come into being or do not transform themselves into acts except in the case of individuals forming a crowd."

Mike Sinnen

Emotion runs high in this crowd of rock fans

Most frequently the crowd will turn into a mob when the reasoning power of its members is weakened by excitement or fear or anger. In Edward Alsworth Ross's words, "An agitated gathering is tinder, and the throngs that form in times of public tension are very liable to become mobs."

A mob is less open to ideas than it is to feelings. "Masked by their anonymity, people feel free to give rein to the expression of their feelings. To be heard, one does not speak; one shouts. To be seen, one does not simply show one's self; one gesticulates. Boisterous laughter, Frenzied objurgations, frantic cheers, are needed to express the merriment or wrath or enthusiasm of the crowd. Such exaggerated signs of emotion cannot but produce in suggestible beholders exaggerated states of mind.... To the degree that feeling is intensified, reason is paralyzed. In general, a strong emotion inhibits the intellectual processes. In a sudden crisis we expect the sane act from the man who is 'cool' who has not 'lost his head'. Now, the very hurly-burly of the crowd tends to distraction. Then, the high pitch of feeling to which the crowd gradually works up checks thinking and results in a temporary imbecility. There is no question that, taken herdwise, people are less sane and sensible than when they are dispersed."

It is the hostile outburst of a mob which grabs the headlines–and when this hostile outburst is directed against cherished social institutions (such as government or the police or the courts), the question is always raised–and too late: "How was this possible?"

There are various reasons that can bring a particular section of our society to the state of creating a hostile outburst. Among these, one deserves special attention. "Hostile outbursts appear as a result of the gradual or sudden closing of important and legitimate channels of protest," says Smelser.

That is why a prison setting produces violent protests so often and with such regularity. If there is no opportunity of expressing grievances legitimately, alternative channels will be sought by the aggrieved, and not infrequently violence turns out to be one of them. If justice is perceived as not being adequately done through legal channels, crowds that begin by protesting legally may end up as mobs acting violently. Add to these factors the condition of social strain and you have the ingredients of the kind of action all societies fervently hope to prevent.

The existence of the Ontario Human Rights Commission as a legitimate channel for venting grievances may thus be seen to play a significant social role. It can be and probably is at all times an important guarantor of social sanity and reason. To fulful its task, of course, it must be enabled to do its job properly. If as a channel for grievances it becomes itself a cause for grievance because of undue delay, then its function as a social safety valve is seriously impeded. The speedup of handling grievances that come before the commission is therefore significant not only for the sake of the individual parties involved–both complainant and respondent–but also for the sake of the health of the community.

The commission has an increasing backlog of cases (at this writing there are over 1,000). The human rights staff faces an ever larger case load, with ever diminishing prospects of catching up. Waiting six months, a year, or even two years before a complaint is adjudicated, is unfair to the parties, injurious to the process itself, and potentially dangerous for society. The commission therefore must be enabled to meet the rising expectations of the people in order to diminish the volatility of popular frustration. ■

The case of a cab driver who insisted on his rights.

Mr. M.D. is a Sikh by religion, and is therefore bound by his faith never to cut his hair or to shave his beard. When Mr. M.D. applied for a position with Cab Company K, he was informed that the company had a policy of not employing men with beards or long hair, a policy not based on willful discrimination against any particular group but on the presumed good impression that clean-shaven, short-haired drivers makes on the public.

The company's practice clearly contravened Section 4a.-(1) of the Human Rights Code, which prohibits discrimination in hiring on the basis that

"No person shall... refuse to employ... any person because of... race, creed etc."

After the complaint had been filed, the company realized that its policies had breached the Code (especially since a board of inquiry had already ruled on this issue in 1977) and was prepared to receive a renewed application from Mr. M.D. and to send him a letter of apology.

The desire of our Sikh population to practice its religion unhindered has come before the commission in other cases. Thus, the question arose whether an observant Sikh should always be allowed to wear his turban, or whether his turban should be replaced when another headgear was prescribed on the job. In 1977, board chairman, Peter A. Cumming, ruled that a Sikh employee need not remove his turban in order to don a company cap. But would this apply also to a hard hat required to be worn as a safety measure?

The issue is this: On the one hand, a Sikh has the right to wear his turban because his religious practices are protected under the law. On the other hand, the construction industry is governed by certain safety procedures, applicable to all. These rules provide that on particular jobs hard hats are to be worn. A Sikh who claims exemption from this provision, finds his personal rights to be in conflict with safety regulations. Which has precedence?

To date, this issue has not been referred to a board of inquiry. ■

What We Affirm

Every person is free and equal in dignity and rights without regard to race, creed, colour, sex, marital status, age, nationality, ancestry or place of origin.

This principle is embedded in the Ontario Human Rights Code.

The Man Who Came To Dinner

The case is not a recent one, but since *Affirmation* is a new publication we take the opportunity to bring you, from time to time, some older cases of interest.

In September 1977, Mary A. Eberts was appointed as a board of inquiry to decide an alleged contravention of a provision of the Ontario Human Rights Code which prohibits discrimination with respect to any term or condition of occupancy of housing accommodation "because of the race of a person ... or of any other person." The decision was important because it was the first board of inquiry to consider an alleged violation of this provision.

The main facts were not in doubt. In a small community not far from Toronto, Ms. J. had rented a house which was part of a compound on which stood the house of the landlords, Mr. and Mrs. B. On the whole, the relationship between landlord and tenant had been good, with some minor tensions erupting from time to time. But one evening Ms. J. entertained two guests for dinner, one of whom was a black Jamaican. As the guest parked his truck and walked to Ms. J's home he was observed by Mr. B. The landlord became greatly excited, telephoned his tenant, and ordered her "to get the Negro off the property or I will call the police." Ms. J. was further threatened with eviction if her visitor did not leave.

The case may strike us as strangely out of date–yet similar incidents are still happening today. Then, as now, the feelings involved were real and so was the seriousness of the argument. In a key paragraph the board of inquiry wrote:

> "The contraction of a right to quiet enjoyment of the premises from one which is to be available for 'all usual purposes' to one which would be available 'for all usual purposes except the offering of hospitality to blacks' is a discrimination in a term of condition of occupancy which operates against Ms. J. She is thereby put in a worse position than other tenants who enjoy the covenant of quiet enjoyment to its full extent; it is immaterial that these other tenants are not tenants of Mr. B., but tenants in Ontario generally."

The board awarded damages to Ms. J. because of a substantial affront to her dignity and ordered a letter of apology to be sent to her as well as to the gentleman who had visited her. The landlord was ordered to send a letter of assurance to the Ontario Human Rights Commission that similar acts would not take place in the future. Ms. J. also received special damages to compensate her for expenses in moving away (which she did subsequently), and finally, the respondent was obliged for the next two years to inform the Commission of any vacancies in rental accommodation which he owned. The purpose of this last order was to make sure that further discrimination would not be practiced in his rental of the property.

The man who came to dinner at Ms. J.'s made important legal history in Ontario. It's no one's business with whom you socialize in your apartment, not the neighbours', and not the landlord's. ■